Supreme Court, U.S.
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92-1972

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

STAN FURMANSKI M.D., PETITIONER

v.

GAIL FURMANSKI, RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO CALIFORNIA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

STAN FURMANSKI M.D.
PETITIONER
2303 N. 44th Street 161
Phoenix, Arizona 85008
(310) 601-6746

Petitioner, pro per

QUESTIONS PRESENTED FOR REVIEW

1. The first question is whether a "Non-Article III" federal judge lacks U.S. Constitutional authority to enter without any trial an order adjudicating state law claims and contract claims from a state action, since the U.S. SUPREME COURT in Marathon Pipeline v Northern Pipeline 102 S.Ct. 2858 has now determined that a Non-Article III judge lacks ANY U.S. Constitutional authority to adjudicate such state law issues even if he holds a trial.

2. The second question is whether the appellant Stan Furmanski M.D. had a Constitutional right for a trial or jury trial before an "Article III" judge as a right under the United States Constitution Article III, & whether his guaranteed right to trial by Article III judge and his due process rights were denied when a Non-Article III judge attempted to enter an order to adjudicate state law issues and to dispose of about $ 2 Million of appellant's real property WITHOUT taking any evidence in

federal forum nor holding any type of trial.

3. The third question relates to the Supremacy clause, and the question whether after "Removal" of a state action to the U.S. District Court, the jurisdiction of the state court ABSOLUTELY CEASES, and whether all orders (entered after removal) are VOID, pursuant to federal law 28 U.S.C. 1446, and the Supremacy clause, & Rule Bankr Proced 9027.

4. The fourth question is whether a state order issued in violation of the automatic stay under 11 U.S.C. 362(a) is VOID and not merely voidable. The federal appeals courts have already held such orders are ENTIRELY VOID, and not merely voidable in SCHWARTZ VS UNITED STATES 954 F. 2d 569.

5. The fifth question is whether the Calif Court of Appeals errored in failing to examine the lack of constitutional authority for non-article III judges to adjudicate issues reserved for article III judges under the U.S. and State Constitutions. [15 additional federal questions for review follow]

ADDITIONAL QUESTIONS FOR REVIEW

1. THE STATE COURT WAS WITHOUT JURISDICTION TO ISSUE ANY ORDER AFTER "REMOVAL" OF THE STATE CASE TO THE UNITED STATES DISTRICT COURT ON AUGUST 16, 1989, PURSUANT TO CODE 28 U.S.C. 1446(e) and BANKRUPTCY RULE 9027. FEDERAL QUESTION IS THAT UNDER FEDERAL LAW STATE COURT JURISDICTION ABSOLUTELY CEASES UPON REMOVAL TO THE FEDERAL COURT.

2. THE STATE COURT ERRORED BY ENTERING A JUDGMENT ON AUGUST 31,1989, TWO WEEKS AFTER REMOVAL OF THE STATE CASE TO THE FEDERAL COURT ON AUGUST 16,1989, PURSUANT TO FEDERAL LAW 28 U.S.C.1446e, and BANKRUPTCY RULE 9027.

3. THE CALIFORNIA COURT OF APPEALS ERRORED WHEN IT DECIDED A FEDERAL QUESTION THAT CONFLICTS WITH THE DECISION OF ANOTHER STATE COURT, NAMELY THAT AFTER "REMOVAL" OF THE STATE ACTION TO FEDERAL DISTRICT COURT ON AUGUST 16, 1989, THAT THE STATE COURT COULD CONTINUE TO MAKE ORDERS AND JUDGMENTS MORE THAN TWO WEEKS AFTER THE REMOVAL, IN

CONTRAVENTION OF 28 USC 1446e, BANKRUPTCY RULE 9027, AND OTHER DECISIONS IN CONFLICT WHICH HOLD THAT STATE JURISDICTION ABSOLUTELY CEASES WHEN A CASE IS REMOVED TO THE DISTRICT COURT.

4. HON SUMUEL BUFFORD LACKED U.S. CONSTITUTIONAL AUTHORITY TO ADJUDICATE STATE LAW CLAIMS, PURSUANT TO U.S. SUPREME COURT DECISION IN MARATHON PIPELINE 102 S.Ct 2858. SINCE THE BANKRUPTCY JUDGE WAS A NON-ARTICLE III JUDGE, WHEN HE ISSUED ORDERS, HON SAMUEL BUFFORD LACKED U.S. CONSTITUTIONAL AUTHORITY TO ADJUDICATE STATE LAW CAUSES OF ACTION AND LACKED AUTHORITY TO ADJUDICATE STATE BRACH OF CONTRACT SUIT, PURSUANT TO THE U.S. SUPREME COURT DECISON OF NORTHERN PIPELINE VS. MARATHON PIPELINE 102 S.Ct 2858 (1982).

5. PETITIONER'S RIGHTS UNDER ARTICLE III OF THE U.S. CONSTITUTION WERE VIOLATED WHEN CALIF COURT OE APPEALS ACCEPTED A NON-ARTICLE III JUDGE'S ORDER AS TOTAL ADJUDICATION OF PETITIONERS STATE LAW CLAIMS.

AUTHORITY TO ADJUDICATE STATE LAW CLAIMS. COURT OF APPEALS ERRORED WHEN IT FAILED TO ABIDE BY DETERMINATION OF THE SUPREME COURT AND CHOSE TO RADIFY IMPROPER ORDER OF A NON-ARTICLE III JUDGE, MADE WITHOUT U.S. CONSTITUTIONAL AUTHORITY.

6. THE PETITIONER HAS BEEN DEPRIVED OF HIS RESIDENCE AND OTHER PROPERTY WITHOUT DUE PROCESS OF LAW UNDER THE U.S. CONSTITUTION, BECAUSE A NON-ARTICLE III JUDGE LACKS U.S. CONSTITUTIONAL AUTHORITY TO ADJUDICATE STATE LAW ISSUES, AND BECAUSE AFTER REMOVAL OF THE STATE ACTION, THE STATE JUDGE LACKED JURISDICTION OVER THE CAUSE. Questions of U.S. Constitutional authority of non-article III judges are reviewable under Rule 10.1(b),(c). Due process rights under federal law reviewable under Rule 10.1(b),(c).

7. PETITIONER WAS ENTITLED TO A JURY TRIAL AND WAS DENIED JURY TRIAL. THE PETITIONER WAS DEPRIVED OF HIS HOUSE AND PROPERTY AND DEPRIVED OF HIS USE OF THE PROPERTY WITHOUT A JURY TRIAL, WHICH HE DEMANDED AND WHICH HE WAS DENEIED IN VIOLATION OF HIS U.S. CONSTITUTIONAL RIGHTS TO A JURY TRIAL. QUESTION OF DUE PROCESS.

8. THE PETITIONER WAS DEPRIVED OF HIS HOUSE AND PROPERTY IN VIOLATION OF DUE PROCESS, BY ISSUANCE OF A VOID STATE JUDGMENT AFTER REMOVAL OF THE STATE CASE TO THE FEDERAL COURT.
COURT OF APPEALS ERRORED IN NOT FINDING THE STATE JUDGMENT VOID FOR LACK OF JURISDICTION, AND ERRORED IN ACCEPTING ORDER OF A NON-ARTICLE III JUDGE WITH REGARD TO STATE LAW CAUSES OF ACTION IN CONTRAVENTION OF THE U.S.SUPREME COURT DECISION OF NORTHERN PIPELINE VS MARATHON PIPELINE 102 S. Ct 2858 (1982) WHICH DETERMINED THAT NON-ARTICLE III

JUDGES LACK U.S. CONSTITUTIONAL AUTHORITY TO ISSUES SUCH ORDERS REGARDING STATE LAW CAUSES OF ACTION. U.S. Supreme Court has jurisdiction under Rule 10.1.

9. PETITIONER WAS DEPRIVED OF A FAIR ADVERSARY HEARING. The Bankruptcy Court never called witnesses nor held a trial, and no adversary hearing was had. In the state court, jurisdiction terminated when the case was removed, and no judgment was issued prior to August 16, 1989. Therefore no valid judgment was issued and no fair adversary hearing was held.

10. CALIF COURT OF APPEALS ERRORED IN AFFORDING FAITH OR CREDIT TO THE ORDER OF A NON-ARTICLE III JUDGE AS TO STATE ISSUES.

11. CALIF COURT OF APPEALS LACK U.S. CONSTITUTIONAL AUTHORITY TO ENFORCE THE ORDER OF A NON-ARTICLE III JUDGE AS ADJUDICATION OF APPELLANT'S STATE LAW CLAIMS. The U.S. Supreme Court has determined in

Northern vs Marathon Pipeline 102 S.Ct 2858 (1982) that such orders of non-article III judges on state law issues are unenforceable.

12. STATE TRIAL JUDGE ISSUED A VOID JUDGMENT, BECAUSE AFTER THE CHAPTER 11 FILING AN AUTOMATIC STAY UNDER 11 U.S.C. 362 PRECLUDED ACTION OR JUDGMENT BY THE STATE TRIAL JUDGE. ADDITIONALLY, THE SUBSEQUENT REMOVAL DEPRIVED HIM OF ANY JURISDICTION. FEDERAL LAW HOLDS THAT STATE LAW ORDER ISSUEDIN CONTRAVENTION OF THE AUTOMATIC STAY OR REMOVAL ARE VOID AND NOT MERELY VOIDABLE, AS IN SCHWARTZ VS UNITED STATES 954 F. 2d 569.

13. CALIF COURT OF APPEALS ERRORED IN FAILING TO DETERMINE THAT THE DATE OF REMOVAL WAS AUGUST 16, 1989, AND THAT ALL JURISDICTION WAS WITH THE FEDERAL COURT AS OF THAT DATE. PETITIONER WAS DEPRIVED OF HIS PROPERTY WITHOUT DUE PROCESS AS A RESULT, IN VIOLATION OF FED LAW 28 U.S.C.1446e;Bnk Rule Pr 9027.

14. CALIFORNIA COURT OF APPEALS ERRORED WHEN BY WAY OF ITS DECISION IT AFFORDED FULL FAITH AND CREDIT TO IMPROPER ORDER OF A NON-ARTICLE III JUDGE, AS TO STATE LAW CLAIMS, IN VIOLATION OF U.S. SUPREME COURT DECISION OF MARTHON PIPELINE 102 S.Ct.2858. THE NON-ARTICLE III (Bankruptcy) JUDGE IN THIS CASE, HON SAMUEL BUFFORD LACKED U.S. CONSITUTIONAL AUTHORITY TO ADJUDICATE STATE LAW ISSUES, AND BREACH OF CONTRACT SUIT. ISSUE ALSO REVIEWABLE AS VIOLATION OF CONSTITUTIONAL GUARANTEE TO PROCEDURAL DUE PROCESS BECAUSE THE NON-ARTICLE III JUDGE HELD NO TRIAL AND NO FAIR ADVERSARY HEARING, AND HE LACKED U.S. CONSTITUTIONAL AUTHORITY TO ADJUDICATE STATE LAW CLAIMS. PETITIONER WAS THEREBY DEPRIVED OF HIS HOUSE AND PROPERTY WITHOUT DUE PROCESS OF LAW AND CONSTITUTIONAL GUARANTEES OF DUE PROCESS.

15. FED REMOVAL STATUTE UNDER BANKRUPTCY RULE 9027 AND Title 28 USC 1146(e) IS INDEPENDENT OF AUTOMATIC STAY 11 USC 362.

CENTRAL ISSUE FOR REVIEW

Whether a non-article III judge has the U.S. Constitutional authority to adjudicate state law claims removed from the state court. The Calif Court of Appeal conflicts directly the landmark U.S. Supreme Court Decision in "Marathon Pipeline vs Northern Pipeline" 102 S. Ct 2858, which holds that bankruptcy judges are defined as "non-article III" judges, and DO NOT possess the U.S. Constitutional authority to adjudicate state law contract issues or state law claims, even if a trial is held. Supreme Court Rules, Rule 10.1 permits a Writ of Certiorari to issue when state decisions conflict with U.S. Supreme Court decisions as to the lack of Constitutional authority of judges. State courts cannot validate orders which are unconstitutional because they violate the U.S. Constitution.

LIST OF PARTIES

Stanley Furmanski M.D., petitioner; Gail Furmanski, respondent; Karen Ibara and Ibara Land claimants. -x-

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

STAN FURMANSKI M.D., PETITIONER

v.

GAIL FURMANSKI, RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO CALIFORNIA COURT OF APPEALS

The petitioner, Stan Furmanski M.D. respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals of California, Second Judicial District, entered in the above entitled proceeding on November 10, 1992 (unpublished).

OPINIONS BELOW

The petitioner sought rehearing by the California Court of Appeals, and rehearing was

denied on December 2, 1992 by unpublished order No. B043231. The unpublished order is reprinted as Appendix pg 1 e. The petitioner thereafter sought review by the California Supreme Court by way of a petition for review filed December 21, 1992. Discretionary review was denied by the Calif Supreme Court by way of its unpublished order denying discretionary review on January 27, 1993, which bears the court case number S030321. That denial is not reported in an official published reporter, and is reprinted in the appendix as page number 1 d.

JURISDICTION

The denial of the petition for review by the Calif Supreme Court was entered January 27, 1993. The opinion of the Court of Appeal was entered November 10, 1992. A petition for rehearing was denied on December 2, 1992. This Court's jurisdiction is invoked pursuant to Title 28, 28 U.S.C. 1257, 1257(a), and under Rule 10 and Rule 10.1(b) and 10.1(c). The petition was submitted on April 27, 1993 within

90 days after denial of state discretionary review.

LIST OF PARTIES

The parties to the action are Stan Furmanski, petitioner; Gail Furmanski, respondent; Ibara Land Trading Co Inc., and Karen Ibara, claimant.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitution of the United States, Article III., and also Amendment V.

Article III: Federal Judiciary. That the Constitution establishes a system of federal courts with life tenured Article III judges. Judicial authority is vested only in federal Article III judges with life tenure.

Amendment V.: That no person shall be deprived of life, liberty or property, without due process of law; nor shall private property betaken for public use, without just compensation.

Amendment XIV, Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. 1446. REMOVAL STATUTE; Procedure for Removal. Upon filing of a petition for removal, the case is removed and state court shall proceed no further. Text reprinted Appendix 1 h .

Bankruptcy Rule 9027. Bankruptcy Rules are adopted by act of congress, and supervene state law by Supremacy Clause. Bankrutpcy Rule of Procedure 9027 provides that a state civil action is "Removed"

and state jurisdiction absolutely ceases upon the filing of "Petition for Removal" in the federal forum and a copy with the clerk of the state court. After filing jurisdiction of state absolutely ceases and state court may proceed no further.

AUTOMATIC STAY 11 USC 362. Upon the filing of a petition under this title (Chapter 11), and automatic stay of all proceedings occurs by operation of law, precluding any civil state court from proceeding. This is known as the "automatic stay of proceedings" or 11 U.S.C. 362(a).

STATEMENT OF THE CASE

Stan Furmanski filed for divorce in 1984 and before a final judgment was entered, he sought Chapter 11 protection under the Bankruptcy Code in April 1989. Gail Furmanski joined Ibara as a claimant, and Ibara sued under state law contract law. The entire state civil action was removed to the U.S.District Court on August

16,1989 as evidenced by the petition for removal reprinted as Appendix page 1a. No judgment had been rendered on the date of removal.

The U.S.District Court retained jurisdiction, and by order of federal judge Consuela Marshall in October 1989, the entire case was transferred to the bankruptcy court of Judge Bufford.A copy of Marshall's transfer order is reproduced as Appendix pg 1b.Therefore, under 28 U.S.C. 1446, and Bankruptcy Rule 9027(Removal), he state case had been removed effective August 16, 1989,and jurisdiction was entirely with the federal court. After removal,and in violation of 28 U.S.C. 1446, and Bnk Rule 9027, and in violation of the automatic stay under federal law 11 U.S.C. 362 (a),the state court judge, James Kolts continued to formulate a judgment and prepared a judgment and signed it. Under Schwartz vs United States such an order is VOID and not merely voidable.

The civil action remained in the bankruptcy court for about 2-3 years.Gail Furmanski sought relief from stay from Judge Bufford,and relief

from stay under 11 USC 362 was DENIED in 1989. Therefore, the Automatic Stay in the Chapter 11 case remained intact for about two years.

The petitioner, Furmanski asserts that Judge Bufford was empowered by congress to grant discharges in bankruptcy, but that Judge Bufford's powers did not extend to the include authority to adjudicate state law issues. Without receiving witnesses nor evidence, and without holding a "trial", Judge Bufford entered an order proporting to adjudicate the state law contract issue and disposing of about $2 Million of Mr. Furmanski's property. Petitioner filed his appeals of all orders. He appealed the Kolts order, since the state court had lost all jurisdiction by operation of law upon the removal of the case to the federal court.

In his appeal to the Court of Appeals, Furmanski also argued that Judge Bufford did not have U.S. Constitutional authority to make an adjudication of state law contract & state

law divorce claims, since the U.S. Supreme Court has determined that Bankruptcy judges are "Non-Article III" judges, and that they lack the Constitutional authority to adjudicate state law claims (Marathon Pipeline vs Northern Pipeline 102 S. Ct. 2858).Therefore, Judge Bufford lacked Constitutional authority to make a disposition of state law claims. Moreover, the petitioner Furmanski was entitled to a hearing and a trial before a true Article III judge before his property could be taken or disposed of. Therefore, Furmanski had the right to trial by Article III judge and he was denied it. Also, the petitioner was entitled to a full trial and likely a jury trial, but was denied any federal trial,since Judge Bufford acted without allowing evidence or witnesses to be presented. This raises due process issues of deprevaiton of property without due process under the Fifth and Fourteenth Amendment of the U.S. Constitition.

LEGAL HISTORY OF CASE

A civil dissolution was commenced in Superior Court of California, County of Los Angeles in 1984, as case D 128 811, and consolidated with a breach of contract action and another civil action.

The petitioner S.F. filed for Chapter 11 bankruptcy protection in April 1989, and the state civil action was REMOVED to the U.S. District Court on August 16,1989 by a litigant K.I. who was a creditor in the bankruptcy. The removal on August 16,1989 is evidenced by Appendix 1 a, and the bankruptcy petition by Appx pg 1 f. The state court jurisdiction ended on August 16, 1989 by operation of law under Rule 9027 of Bankruptcy Procedure, and 28 USC 1446e. Notice to state court clerk was timely filed, as shown in Appx pg. 1 a. A bond was posted although local rules no longer require it. The U.S. District judge retained jurisdiction between August 16, 1989 and October 23, 1989, when she ordered the case to the Bankruptcy Court judge

Samuel Bufford who was assigned S.F.'s bankruptcy case shown in Appx pg 1c. Her order is attached as Appx pg 1c, and evidences that the federal court retained jurisdiction. The case remained for more than two years in the federal forum. After the removal, the state court judge (Kolts) defied the removal, and continued to issue orders and signed a judgment on August 31, 1989, in violation of 28 USC 1146(e), and 11 USC 362(a). Petitioner asserts it is void. Petitioner Stan Furmanski appealed the Kolts orders since they were issued without jurisdiction. and in violation of removal statutes, and 11 U.S.C. 362, 28 USC 1446(e), and in violation of Bankruptcy Rule of Procedure 9027. The petitioner asserted that the state court lost jurisdiction on August 16, 1989 and that no valid judgment was entered. Judge Kolts judgment of Aug 31, 1989 is void for lack of jurisdiction. Judge Bufford being an non-article III judge was without

U.S.Constitutional authority to adjudicate state law and state law contract issues. The Court of Appeals concluded that judge Bufford COULD adjudicate state law issues in contravention of the MARATHON decision in MARATHON PIPELINE 102 S.Ct. 2858. The title page of the decision of MARATHON PIPELINE is reproduced as App pg 1 g. The Court Appeal ruling is App pg "(1 i)". In effect, the Court of Appeals decided a Bankruptcy Judge could issue any order, and also affirmed the state judge's order issued AFTER the removal of the case. Petitioner sought discretionary review by the Calif Supreme Court, which declined to hear the petition on January 27, 1993.

The petitioner raises the following five central Constitutional Questions in the following argument, and fifteen other federal and constitutional questions and issues in the following argument.

ARGUMENT: CONSTITUTIONAL QUESTIONS

ARGUMENT ON QUESTIONS PRESENTED FOR REVIEW

1. The first question is whether a "Non-Article III" federal judge lacks U.S. Constitutional authority to enter without any trial an order adjudicating state law claims and contract claims from a state action, since the U.S. SUPREME COURT in Marathon Pipeline v Northern Pipeline 102 S.Ct. 2858 has now determined that a Non-Article III judge lacks ANY U.S. Constitutional authority to adjudicate such state law issues even if he holds a trial.

In the case at bar a state civil action was removed to the U.S. District Court and then referred to the Bankruptcy Court. The case included a state law contract claim. The bankruptcy judge WITHOUT TRIAL issued an order which adjudicated the contract claim and in effect disposed of petitioner's state law claim and property without a trial and without petitioner receiving a hearing by an Article III judge. The U.S. Supreme Court

held in MARATHON PIPELINE that a bankruptcy judge is a "Non-Article III judge", and that as such he lacks the U.S. Constitutional authorityj to ajudicate state law claims. The case at bar is identical to the Marathon case, since in Marathon there was a state law "breach oí contract" cause which was adjudicated by a brankruptcy judge. In Marathon the U.S. Supreme Court held that only an Article III judge could perform Article III functions and that they could not be delegated. Further, that a bankruptcy judge lacked the Constitutional authority to adjudicate state law (and breach of contract) type state law claims. Therefore, the Calif Court of Appeals errored by not considering the question that a non-article III judge lacks the authority to adjudicate state law and contract issues after MARATHON PIPELINE. It follows that since the bankruptcy court judge lacked constitutional authority to dispose of property that his order is invalid on the same grounds that Marathon's contract

claim adjudication was invalidated by the U.S. Supreme Court in 1982.

ARGUMENT TWO

2. The second question is whether the appellant Stan Furmanski M.D. had a Constitutional right for a trial or jury trial before an "Article III" judge as a right under the United States Constitution Article III, & whether his guaranteed right to trial by Article III judge and his due process rights were denied when a Non-Article III judge attempted to enter an order to adjudicate state law issues and to dispose of about $ 2 Million of appellant's real property WITHOUT taking any evidence in federal forum nor holding any type of trial.

Once the state civil action was removed to the U.S. District Court, the petitioner Furmanski had a constitutional right to have his claims adjudicated by an Article III judge. However, after the case was referred to the bankruptcy court, it was handled by a bankruptcy court judge who is not tenured

and not an "Article III" judge. Without trial, and without receiving exhibits, or evidence or witnesses, the bankruptcy judge issued an order having the effect of adjudicating the state law issues, and the "breach of contract" cause of action. The petitioner never consented to a trial, and no trial was held. Thereby, the petitioner was deprived of his property without due process under the fifth and fourteenth amendments. Moreover, Furmanski was entitled to a trial by an Article III judge, but he was denied one. Therefore, the U.S. Supreme Court should grant the petition regarding this issue and on the grounds that Furmanski was entitled by the U.S. Constitution to adjudication of the issues of a genuine Article III judge, and by way of a trail on the merits in federal court. Bankruptcy judges have been determined to be "non-article III" judges and without power to adjudicate state law issues in the decision of MARATHON PIPELINE

VS NORTHERN PIPELINE 102 S. Ct. 2858.(1982). Further, the petitioner made a written demand for a jury trial, but was denied a jury trial in federal court. In fact, on the state issues he was denied a trial altogether, which is violative of due process rights under the Fifth and Fourteenth amendments.

ARGUMENT THREE

3. The third question relates to the Supremacy clause, and the question whether after "Removal" of a state action to the U.S. District Court, the jurisdiction of the state court ABSOLUTELY CEASES, and whether all orders (entered after removal) are VOID, pursuant to federal law 28 U.S.C. 1446, and the Supremacy clause, & Rule Bankr Proced 9027.

Pursuant to federal law, including 28 U.S.C. 1446(e), and Bankruptcy Rule 9027 the filing of a removal petition causes the jurisdiction to be solely with the federal court, and jurisdiction with the

state court absolutely ceases. There are numerous cases holding that jurisdiction absolutely ceases upon removal:
Meseda vs Honda Motor 11 Fla; Hopson vs Norrther America 71 Idaho 461; Sugimoto vs Exportadora 233 Cal App 3d 165; Laguna Villiage In vs Laorers 35 Cal. 3d 174.

ARGUMENT (FOUR)

4. The fourth question is whether a state order issued in violation of the automatic stay under 11 U.S.C. 362(a) is VOID and not merely voidable. The federal appeals courts have already held such orders are ENTIRELY VOID, and not merely voidable in SCHWARTZ VS UNITED STATES 954 F. 2d 569.

5. The fifth question is whether the Calif Court of Appeals errored in failing to examine the lack of constitutional authority for non-article III judges to adjudicate issues reserved for article III judges under the U.S. and State Constitutions.

The U.S. Supreme Court in MARATHON PIPE-

LINE VS NORTHERN PIPELINE 102 S.Ct., 2858 has determined that it is unconstitutional for a bankruptcy judge to adjudicate state law issues, or to perform the functions which are solely those of the Article III federal judges. The Calif Appeals Courts are bound by the Marathon decision, but the Court of Appeal of California errored by refusing to consider U.S. Constitutional issue and the limited authority of bankruptcy court judges imposed after Marathon. Thereby, the Court of Appeals is permitting to stand an order which under identical circumstances was found unconstitutional in the Marathon Case. The U.S. Supreme Court should grant the present petition so that the Court of Appeals is required to examine the issue that orders of the bankruptcy court are unenforceable in state court when they are issued by Non-Article III judges, who do not have authority to issue them under the U.S. Constitution.

2. THE STATE COURT ERRORED BY ENTERING A JUDGMENT ON AUGUST 31,1989, TWO WEEKS AFTER REMOVAL OF THE STATE CASE TO THE FEDERAL COURT ON AUGUST 16,1989, PURSUANT TO FEDERAL LAW 28 U.S.C.1446e, & BANKRUPTCY RULE 9027.

As reflected in the foregoing pages of this petition, the state action was REMOVED effective Aug 16, 1989, and the jurisdiction of the state court absolutely ceased as in MASEDA VS HONDA; STEAMSHIP VS TUGMAN; HYDE PARK VS CONNOLY 839 F 2d 837; HOPSON VS NORTH AMERICAN; LOWE VS JACOBS; STATE VS NAACP; AND BEAN VS CLARK MISS which all hold that state orders issued after a Removal Petition are void.

Therefore, after the removal petition was filed, the Calif state court errored by continuing to hold proceedings and to issue an order two weeks after removal. Since numerous other states and other State supreme courts have held such order to be void, the U.S. Supreme Court should grant this petition as to the

issue that state trial court errored in continuing to issue orders, and that the state Court of Appeals errored by not finding such additional orders void. Even in California, other Court of Appeal decisions are in conflict with the case at bar. In SUGIMOTO VS EXPORTADORA 284 Cal Rptr 275 (1991), a state action was removed to federal court. Subsequent orders by the state court were found void. Likewise in LAGUNA VILLAGE 35 Cal 3d 174.

3. THE CALIFORNIA COURT OF APPEALS ERRORED WHEN IT DECIDED A FEDERAL QUESTION THAT CONFLICTS WITH THE DECISION OF ANOTHER STATE COURT, NAMELY THAT AFTER "REMOVAL" OF THE STATE ACTION TO FEDERAL DISTRICT COURT ON AUGUST 16, 1989, THAT THE STATE COURT COULD CONTINUE TO MAKE ORDERS AND JUDGMENTS MORE THAN TWO WEEKS AFTER THE REMOVAL, IN

The Calif Court of Appeals errored when it affirmed a state order made AFTER removal of the case to the federal court.

This is in violation of the Bankruptcy Code, the Rule of Bankruptcy Procedure 9027, and 11 USC 362(a) autom stay and in violation of 28 USCA 1446(e), which provides that AFTER removal, the state court shall not act and "shall proceed no further unless and until the case is remanded". Further, the removal statutes and the automatic stay function independently. The automatic stay in the Chapter 11 occur by operation of law under 11USC362 INDEPENDENTLY, and judge Kolts also could not issue any order in violation of the federal automatic stay. While Gail Furmanski sought relief from the "automatic stay" by motion, Judge Bufford DENIED relief from stay in June 1989. Therefore, on August 31, 1989, the automatic stay under 11 USC 362(a) was in full force and effect, and Judge Kolts could not issue any order. He errored when he did so. In a recent federal case of SCHWARTZ VS UNITED STATES 954 F. 2d 569

the federal court held that all orders of the state court in violation of the bankruptcy automatic stay are VOID, and not merely voidable, In the case of SCHWARTZ VS UNITED STATES, the decision in pertinant part reads: "Our decision today clarifies this area of law by making clear that violations of the automatic stay are VOID, AND NOT (merely) VOIDABLE."

Schwartz vs United States 954 F2d 569. Six other cases also hold that a violation of the automatic stay is VOID: KALB VS FEUERSTEIN 308 U.S. 433; ELLIS VS CONSOLID ATED DEISEL 894 F 2D 371; IN RE ADVENT CORP 24 BR 612; IN RE COLEMEN AM COS 26 B.R. 285; IN RE PETTIBONE CORP 110 B.R. 848; IN RE MILLER 10 B.R. 778.

It should be noted that the prohibitions of "automatic stay", and the loss of jurisdiction caused by Removal of the case both operated independently to preclude state judge Kolts from issuing any judgment on August 31, 1989.

It is appropriate for the U.S. Supreme Court to grant the petition as to the issue after August 16, 1989, the state judge errored by issuing VOID orders in violation of federal statutes which control "removal" on the one hand, and which the automatic stay under 11 USC 362a on the other.

4. HON SUMUEL BUFFORD LACKED U.S. CONSTITUTIONAL AUTHORITY TO ADJUDICATE STATE LAW CLAIMS, PURSUANT TO U.S. SUPREME COURT DECISION IN MARATHON PIPELINE 102 S.Ct 2858. SINCE THE BANKRUPTCY JUDGE WAS A NON-ARTICLE III JUDGE, WHEN HE ISSUED ORDERS, HON SAMUEL BUFFORD LACKED U.S. CONSTITUTIONAL AUTHORITY TO ADJUDICATE STATE LAW CAUSES OF ACTION AND LACKED AUTHORITY TO ADJUDICATE STATE BRACH OF CONTRACT SUIT, PURSUANT TO THE U.S. SUPREME COURT DECISON OF NORTHERN PIPELINE VS. MARATHON PIPELINE 102 S.Ct 2858 (1982).

The lankmark U.S. Supreme Court case

of "MARATHON PIPELINE" established that bankruptcy court judges do not have the power of Article III judges, and that the non-article III judges do not have the constitutional authority to adjudicate state law causes of action.

The decision is published in Marathon Pipeline as 102 S.Ct 2858. The U.S. Supreme Court determined definitively that all bankrutpcy judges are non-tenured and "non-article III" judges and DO NOT HAVE the same authority as true Article III judges, and as shown below. The Marathon decision determined that bankruptcy judges (such as S.Bufford in the case at bar) are "non-article III judges". In decision at pg 2861, states: "THERE IS NO DOUBT THAT BANKRUPTCY JUDGES CREATED BY THE ACT ARE NOT ART. III JUDGES".

At decision pg 2861, "The judicial power of the United States must be exercised by judges who have the attributes of life tenure and protection against salary dim-

inution specified by Art III." Decision in Marathon concludes bankruptcy judges are non-article III judges, and that they DO NOT have U.S. Constitutional authority to adjudicate state common law issues.

This is a key issue before the court in the case at bar. The state court has permitted a non-article III judge to adjudicate without trial state law issues, which determination is in direct conflict with the Marathon decision which holds that they cannot, and that they do not have the U.S. Constitiutional authority to adjudicate state law issues.

In the Marathon decision pg 2866, "In short, there is no doubt that the bankruptcy judges created by the Act are NOT ART III JUDGES."

The Marathon decision, at pg 2883, holds: "There are...two separate grounds for today's decision. First non-Art III judges...may consider only controverseies arising out of federal law." It also concludes that the state law claims of Marathon for "breach of contract" are not within the authority of a non-article III judge. The U.S. Supreme Court found that state contract-claims and state common law issues are NOT issues which can be adjudicated by non-article III judges such as bankruptcy court judges. In the case at bar, "Furmanski", the lawsuits include breach of contract, and damages for breach of contract which are the SAME CAUSES OF ACTION claimed by Marathon. Likewise, the state "marriage laws" and laws pertaining to property division are "state law" issues

and do not conform to "purely federal" law. In the decision at pg 2883, the U.S. Supreme Court finds that non-article III judges may consider only controveries ARISING out of federal law.

The U.S. Supreme Court should apply Marathon Pipeline to the case at bar. Ibara's claims (like Marathon's claims) are breach of contract, and cannot be adjudicated by a non-article III (bankruptcy) judge. Furmanski's claims relate to "divorce" and property division, and therefore arise under state law and not federal law. Therefore, judge Bufford, being a non-article III judge cannot adjudicate them. Moreover, he lacks the U.S. Constitutional authority to do so, and his wrongful attempt to do so would violate Article III of the U.S. Constitution.

Hence, pursuant to the authority of the landmark case of Marathon Pipeline, the state law claims of Furmanski, and Ibara

relative to breach of contract, and to property division under "state law" arose under state law, and cannot be adjudicated by Judge Bufford who is clearly a non-article III judge. The U.S. Supreme Court in Marathon Pipeline determined that bankruptcy judges lack the U.S. Constitutional authority to adjudicate state law causes of action. Marathon Pipeline was extensively cited in the state appeals case.

The Calif Court of Appeals should have disregarded the bankruptcy judge's orders relative to state contract claims and all state law issues. However, it extended full faith and credit, and in effect ratified the improper orders of the non-article III judge, and thereby errored. In so doing, it ignored the U.S. Supreme Court case of MARATHON PIPE LINE.

Because the Calif Court of Appeals has disregarded the Marathon Pipeline

decision, the U.S. Supreme Court should grant this petition for writ so that the issue of the lack of Constitutional authority of non-article III judges can be properly adjudicated by the same court which rendered the decision of Marathon Pipeline vs Northern Pipeline 102 S.Ct. 2858.

5. PETITIONER'S RIGHTS UNDER ARTICLE III OF THE U.S. CONSTITUTION WERE VIOLATED WHEN CALIF COURT OF APPEALS ACCEPTED A NON-ARTICLE III JUDGE'S ORDER AS TOTAL ADJUDICATION OF PETITIONERS STATE LAW CLAIMS.

The petitioner Furmanski, and the claimant Ibara have a Constitutional right under Article III of the Constitution. The Calif Court of Appeals violated their rights when it gave "full faith and credit" to an order of a non-article III judge which is supposed to adjudicate all Furmanski's and Ibara's state law claims. Just as it

was Unconstitutional for a bankrutpcy judge to adjudicate Marathon's contract issue, it is UNCONSTITUTIONAL for a non-article III judge to adjudicate state law issues of Ibara and Furmanski in the case at bar.

Further, since it is UNCONSTITUTIONAL for such a non-article III judge to issue orders and judgments of state contract claims and dividing marital property, such Unconstitutional orders cannot be afforded "full faith" or credit, nor can they be ratified by the Calif Court of Appeals. An order which is issued without Constiutional authority in the bankrutpcy court cannot be "sanctified" merely by the Court of Appeals affording it full faith. Moreover, the bankruptcy judge never held a trial, never took testimony, never swore a witness and never even had the state "case file", so he never conducted a trial on the merits, and for this additional reason his order is not entitled to full faith or credit.

Therefore this petition should be granted. Petitioner has the right to have his state law claims and contract dispute adjudicated by other-than a non-article III judges. Following MARATHON PIPELINE, Petitioner asserts that non-article III judges lack the authority to adjudicate state contract claims, state claims for contract damages, and lack the authority to issue dissolution of marriage decrees and "property division" from marriage, which are state law issues. Therefore, the Calif Court of Appeals errored when it gave credit to the order of a non-article III judge to determine state contract claims and division of marital property...two causes which are state law issues. The petitioners have the right to a full adversary hearing before other-than non-Art III judge.

5. THE COURT OF APPEALS OF THE STATE OF CALIFORNIA IS BOUND BY U.S. SUPREME COURT DECISION THAT NON-ARTICLE III JUDGES LACK AUTHORITY TO ADJUDICATE STATE LAW CLAIMS. COURT OF APPEALS ERRORED WHEN IT FAILED TO ABIDE BY DETERMINATION OF U.S.SUPREME COURT IN 'MARATHON' AND CHOSE TO RATIFY IMPROPER ORDER OF A NON-ARTICLE III JUDGE, MADE WITHOUT U.S. CONSTITUTIONAL AUTHORITY.

The petitioner in his state appeal Opening Brief and subsequent petitions cited the Marathon Pipeline case, however, the Calif Court of Appeals disregarded the existence of the U.S. Supreme Court decision in Marathon. Rather, it afforded full faith & credit to a dubious order of the non-article III judge, which presumably adjudicated state contract claims and determined community property, which are two state common law issues.

The Calif Court of Appeals should be bound by the U.S. Supreme Court decision in Marathon Pipeline. Otherwise, there

will be conflicting state rulings, some permitting "non-article III" judges to adjudicate state law claims, and other conflicting rulings where such orders are held strictly unconstitutional. Therefore this petition should be granted under Rule 10.1 (b) because of conflict in decisions regarding federal questions. The federal question includes the scope of authority and lack of authority of non-article III judges to adjudicate state law contract issues and lack of constitutional authority to determine community property or divide marital property. Therefore, this petition should be granted.

6. THE PETITIONER HAS BEEN DEPRIVED OF HIS RESIDENCE AND OTHER PROPERTY WITHOUT DUE PROCESS OF LAW AND IN VIOLATION OF ARTICLE III OF THE UNITED STATES CONSTITUTION, BECAUSE THE NON-ARTICLE III JUDGE LACKS U.S. CONSTITUTIONAL AUTHORITY

TO ADJUDICATE STATE LAW ISSUES, AND BECAUSE AFTER REMOVAL OF THE STATE ACTION, THE STATE JUDGE LACKED JURISDICTION OVER THE CAUSE. Questions of U.S. Constitutional authority of non-article III judges are reviewable under Rule 10.1(b),(c). Due process rights under federal law reviewable under Rule 10.1(b),(c).

The petitioner has a right to due process. In the case at bar, the bankrutpcy judge issued an order without proper adversary hearing, without holding a trial, and without taking evidence or swearing witnesses. The judge was a non-article III judge, who is WITHOUT constitutional authority to issue a judgment as to state law issues and state law causes of action such as breach of contract or community property division. Therefore, the procedural due process rights of the Petitioner have been violated, and this petition should

be granted. The Calif Court of Appeals errored in it decision which have full faith and credit to the order of a non-article III judge, which according to MARATHON PIPELINE 102 S. Ct 2858, is without constitutional authority to issue such orders or to adjudicate state law causes of action.

7. PETITIONER WAS ENTITLED TO A JURY TRIAL AND WAS DENIED JURY TRIAL. THE PETITIONER WAS DEPRIVED OF HIS HOUSE AND PROPERTY AND DEPRIVED OF HIS USE OF THE PROPERTY WITHOUT A JURY TRIAL, WHICH HE DEMANDED AND WHICH HE WAS DENEIED IN VIOLATION OF HIS U.S. CONSTITUTIONAL RIGHTS TO A JURY TRIAL. QUESTION OF DUE PROCESS.

The petitioner Furmanski DEMANDED A JURY TRIAL, as did Karen Ibara and written demands for jury trial were filed and present in the case file. After removal, the bankrutpcy judge never held a trial and never permitted

evidence or witnesses before issuing and order adjudicating the contract claim and property claim.

The state court errored by denying a jury trial in violation of the Constitutional right under U.S. Constitution to a jury trial upon those issues for which it is a right. The Court of Appeal errored by allowing the violation of due process.

The civil action included contract, tort, fraud and other issues for which trial by jurt is a constitutionally guaranteed right. Petitioner and Ibara never waived jury trial. Statutory methods of waiver are the EXCLUSVIE means by which a jury trial may be waived and there can be no waivber by implication. (People vs Metropolitan Surety Co (1912) 164 CAl 174, 178. Redondo Beach v. Kumnick (1963) 216 Cal App 2d 830, 835; 21 Cal. Rptr 367.

No waiver results from going to trial after making a written demand for a jury trial and there is erroneous denial of a

jury (Heim v Houston (1976) 60 Cal. App. 3d 770; Selby Constructors v McCarthy 1979 91 Cal. App 3d 517, 154 Cal. Rptr 164. In the case at bar, jury trial was demanded in writing in advance of trial, and by both Stan Furmanski and K Ibara. In addition a motion in limine was made for jury trial and jury trial was denied.

The petition for writ of certiorari should be granted so that the issue of U.S. Constitutional guarantee of jury trial may be properly addressed and adjudicated.

8. THE PETITIONER WAS DEPRIVED OF HIS HOUSE AND PROPERTY IN VIOLATION OF DUE PROCESS, BY ISSUANCE OF A VOID STATE JUDGMENT AFTER REMOVAL OF THE STATE CASE TO THE FEDERAL COURT.

COURT OF APPEALS ERRORED IN NOT FINDING THE STATE JUDGMENT VOID FOR LACK OF JURISDICTION, AND ERRORED IN ACCEPTING ORDER OF A NON-ARTICLE III JUDGE WITH

REGARD TO STATE LAW CAUSES OF ACTION IN CONTRAVENTION OF THE U.S.SUPREME COURT DECISION OF NORTHERN PIPELINE VS MARATHON PIPELINE 102 S. Ct 2858 (1982) WHICH DETERMINED THAT NON-ARTICLE III JUDGES LACK U.S. CONSTITUTIONAL AUTHORITY TO ISSUES SUCH ORDERS REGARDING STATE LAW CAUSES OF ACTION. U.S. Supreme Court has jurisdiction under Rule 10.1.

As reflected in the foregoing argument, the state court lost all jurisdiction on August 16, 1989 two weeks prior to any state judgment being issued. As reflected above after the case was REMOVED, the state judge continued to hold proceedings, and issued one judgment which is VOID, as in MESEDA VS HONDA MOTOR CO LTD, C.A. 11 (FLA) 1988. However the Court of Appeals wrongly determined that the state court judge could continue to hold proceedings after the date the state case was REMOVED to

the U.S. District Court.

Petitioner has lost his house and property because the Calif Court of Appeals has accepted the order of a non-article III bankrutpcy judge issued without trial and without hearing. Petitioner asserts that under the U.S. Supreme Court decision of Marathon Pipeline 102 S.Ct 2858, that non-article III judges and bankruptcy judges lack the Constitutional authority to issue such orders. Therefore, the issuance of such an order is violative of the constitution and violative of procedural due process. The petition for writ should be granted.

Petitioner cites Marathon Pipelines 102 S.Ct 2858

9. PETITIONER WAS DEPRIVED OF A FAIR ADVERSARY HEARING. The Bankruptcy Court never called witnesses nor held a trial, and no adversary hearing was had. In the state court, jurisdiction terminated when

the case was removed, and no judgment was issued prior to August 16, 1989. Therefore no valid judgment was issued and no fair adversary hearing was held.

The bankruptcy judge never issued a trial date and never held a trial. No witnesses were sworn and no evidence was taken. There was no opportunity to examine or cross examine witnesses. For appraisal of marital property there was no opportunity to have experts testify in the bankruptcy court. Therefore, the Petitoner was deprived of a fair adversary hearing. When the bankruptcy judge issued any order relative to state law claims it was without adversary hearing, and therefore cannot be afforded any full faith or credit. In the state court, there was no judgment issued before the date of August 16, 1989 which was the date that the civil action was removed to the federal court. Thereafter, no adversary hearing was held in the federal court.

10. CALIF COURT OF APPEALS ERRORED IN AFFORDING FAITH OR CREDIT TO THE ORDER OF A NON-ARTICLE III JUDGE AS TO STATE ISSUES.

As reflected in the foregoing six paragraphs, the bankruptcy judge never held a trial, never swore any witness, never took evidence, never examined experts, never afforded petitioner time to call witnesses or to cross examine witnesses. Therefore, Court of Appeals errored in extending full faith and credit to the order of a non-article III judge, which was issued without full adversary hearing in his courtroom. This is also a violation of procedural due process. Federal law provides that no property or use of property can be impaired without due process or just compensation, as in First English Evangelical Luthern Church of Glendale vs Los Angeles County; 482 U.S. 304 107 S. Ct 2378.

11. CALIF COURT OF APPEALS LACK U.S. CONSTITUTIONAL AUTHORITY TO ENFORCE THE ORDER OF A NON-ARTICLE III JUDGE AS ADJUDICATION OF APPELLANT'S STATE LAW CLAIMS. The U.S. Supreme Court has determined in Northern vs Marathon Pipeline 102 S.Ct 2858 (1982) that such orders of non-article III judges on state law issues are unenforceable.

The U.S. Supreme Court in Northern Pipeliune vs Marathon Pipeline 102 S. Ct 2858 found that orders of a non-article III judge are invalid, and unenforceable, since he lacks the U.S. constitutional authority to adjudicate state law causes of action.

12. STATE TRIAL JUDGE ISSUED A VOID JUDGMENT, BECAUSE AFTER THE CHAPTER 11 FILING AN AUTOMATIC STAY UNDER 11 U.S.C. 362 PRECLUDED ACTION OR JUDGMENT BY THE STATE TRIAL JUDGE. ADDITIONALLY, THE SUBSEQUENT REMOVAL DEPRIVED HIM OF ANY JURISDICTION. FEDERAL LAW HOLDS THAT STATE LAW ORDER ISSUED IN CONTRAVENTION OF THE AUTOMATIC STAY OR REMOVAL ARE VOID AND NOT MERELY VOIDABLE, AS IN SCHWARTZ VS UNITED STATES 954 F. 2d 569.

As reflected above in this petition, there are numerous authorities which hold that after removal, or after commencement of the automatic stay, that the state court may not proceed. An automatic stay arises under 11 U.S.C. 362(a)., the "automatic stay" which occurs by operation of law. In the case at bar, the Chapter 11 case was filed April 1989. The respondent Gail Furmanski attempted in June 1989 to

obtain "relief from stay", but Judge Bufford DENIED the motion for relief from stay, and a stay was in effect from April 1989 and throughout 1989. Therefore, an "automatic stay" was in effect on August 31, 1989 when Judge Kolts disregarded the removal and bankruptcy stay and issued his judgment on Aug 31, 1989. Under the the case of SCHWARTZ VS UNITED STATES, 954 F 2D 569, the judgment issued by state court judge Kolts is VOID and not merely voidable.

13. CALIF COURT OF APPEALS ERRORED IN FAILING TO DETERMINE THAT THE DATE OF REMOVAL WAS AUGUST 16, 1989, AND THAT ALL JURISDICTION WAS WITH THE FEDERAL COURT AS OF THAT DATE. PETITIONER WAS DEPRIVED OF HIS PROPERTY WITHOUT DUE PROCESS AS A RESULT, IN VIOLATION OF FED LAW 28 U.S.C.1446e;Bnk Rule Pr 9027.

Numerous cases hold that once a case is removed that federal statute 28 USC 1446d,e precludes further action by the state court. (LAGUNA VILLAGE VS LABORERS INT 1983, 35 CAL 3D 174; DAUENHAUER VS SUPERIOR COURT 1957, 149 CAL APP 2D 22; UNITED STATES VS STATE OF OHIO TECA 487 F 2D 936; UNITED STATES EX RE ECHEVARRIA VS SILBERGILITT 2D CIR 1971, 441 F2D 225; 1A MOORE'S FEDERAL PRACTICE SECT 0.168; WRITE FEDRAL PRACTICE AND PROCEDURE SECT 3737, PG 549-552. The statute 28 USC 1446(d) provides that after a civil action is removed to federal court, "that State court shall proceed no further unless and until the case is remanded."

In PRINCESS LOUISE VS PACIFIC LIGHTING 77 B.R. 766, the judge handling the Bankruptcy proceeding in the case at bar held that even if a removal petition had technical defects, the exclusive jurisdiction is still in the federal

court and the state court cannot proceed. The scope of removal petition is determined by the "petition" and the entire civil action is removed by a single petition. Any technical errors in the petition can be corrected.

In Gremillion vs NAACP the court held that after removal petition was filed, all action of the state court subsequent to removal was NULL and VOID. Acts of state court after removal are VOID AB INITIO, as in MASEDA VS HONDA MOTOR; HYDE PARK PARTNERS VS CONNOLY 839 F 2D 837; HUGHES-BECHTOL VS OHIO FARMERS 1989 WL 222726; MURRAY VS FORD MOTOR CO 5TH CIR1985, 770 F2D 461. THEREFORE, THIS PETITION SHOULD BE GRANTED.

14. CALIFORNIA COURT OF APPEALS ERRORED WHEN BY WAY OF ITS DECISION IT AFFORDED FULL FAITH AND CREDIT TO IMPROPER ORDER OF A NON-ARTICLE III JUDGE, AS TO STATE LAW CLAIMS, IN VIOLATION OF U.S. SUPREME COURT DECISION OF MARTHON PIPELINE 102 S.Ct.2858. THE NON-ARTICLE III (Bankruptcy) JUDGE IN THIS CASE, HON SAMUEL BUFFORD LACKED U.S. CONSITUTIONAL AUTHORITY TO ADJUDICATE STATE LAW ISSUES, AND BREACH OF CONTRACT SUIT. ISSUE ALSO REVIEWABLE AS VIOLATION OF CONSTITUTIONAL GUARANTEE TO PROCEDURAL DUE PROCESS BECAUSE THE NON-ARTICLE III JUDGE HELD NO TRIAL AND NO FAIR ADVERSARY HEARING, AND HE LACKED U.S. CONSTITUTIONAL AUTHORITY TO ADJUDICATE STATE LAW CLAIMS. PETITIONER WAS THEREBY DEPRIVED OF HIS HOUSE AND PROPERTY WITHOUT DUE PROCESS OF LAW AND CONSTITUTIONAL GUARANTEES OF DUE PROCESS.

15. FED REMOVAL STATUTE UNDER BANKRUPTCY RULE 9027 AND Title 28 USC 1146(e) IS INDEPENDENT OF AUTOMATIC STAY 11 USC 362.

In the case a bar, there was both a REMOVAL of the case under Bankruptcy Rule 9027, and also an automatic stay.

The automatic stay occurs by operation of law, independently from the statutes on removal. The state court judge James Kolts was PRECLUDED from issuing any order after August 16, 1989 because of two independent federal statutes. On is the "automatic stay" under 11 U.S.C. 362(a), and the other the removal statutes, which are embodied by the Bankrutpcy Code, the Bankruptcy Rule 9027, and the additional related removal statutes 28 U.S.C. 1446 d and 28 U.S.C. 1446 and 1446 e.

The respondent attempted to obtain a "relief from stay" by a motion filed in June 1989, however, the bankruptcy judge Judge Samuel Bufford DENIED HER MOTION, and the automatic stay remained for one

to two years thereafter. Therefore, by both the federal automatic stay, and the removal statutes, the state court judge was precluded from issuing an order on August 31, 1989. When he did so, it was VOID IN INITIO as held in the cases of SUGIMOTO VS EXPORDATO; STEAMSHIP CO VS TUGMAN, HOPSON VS NO AMERICAN; LOWE VS JACOBS, STATE VS NAACP, MESEDA VS HONDA MOTOR, AND BEAN VS CLARK CITED ABOVE. Hansen's argument that she obtained relief from stay in an old Chatper 13 case is not operative, since her June 1989 motion was DENIED, and the most recent federal orders are those which are effective. Also, the loss of jurisdiction by the state court by REMOVAL is independing of the prohibition embodied by the "automatic stay". This, whether or not an automatic stay was in effect does not in any way increase the jurisdiction of the state court after removal, because the

removal is absolute until and unless the cause is remanded. In the case at bar, the case was removed on August 16, 1989 and there was no remand for more than two years. Therefore, the jurisdiction was NOT with the state court on August 31, 1989, and the state court lack jurisdiction to enter any judgment on August 31, 1989. Because the State of California is in conflict with the U.S. Supreme Court, it has decided a federal question in a way that conflicts with the U.S. Supreme Court in Marathon Pipeline 102 S. Ct 2858. Therefore, a Writ of Certiorari should issue under Part III, Rule 10.1(c).

This petition should be granted so that the federal issues regarding federal removal statutes and automatic stay of state courts can be properly addressed, and because the California Court of Appeals has issued its decision in

this case in conflict with numerous authorities and in conflict with the U.S. Supreme Court in Marathon Pipeline, which regards the lack of Constitutional authority of non-article III judges to adjudicate state law claims.

CONCLUSION

The California Court of Appeals is in conflict with the U.S. Supreme Court because the U.S. Supreme Court has determined that bankruptcy judges are non-article III judges, and that as such they lack the U.S. Constitutional authority to adjudicate state law and breach of contract claims. The the case at bar, the Calif Court of Appeals is in conflict with this decision and has allowed a non-article III judge to adjudicate state law issues without a trial, and to dispose of 2 Million dollars in property without a federal trial of any sort. In Maraton, the

U.S. Supreme Court found that such adjudication of state law issues by a non-article III judge (bankruptcy judge) to be constiutionally invalid, since he lacked the U.S. Constitutional authority of a true Article III judge.

Because the California Court of Appeals is in conflict with the U.S. Supreme Court on the issue of the lack of U.S. Constitutional authority of non-article III judges to adjudicate state law issues, the writ of certiorari should issue. This is permitted under Supreme Court Rules 10.1(c), "When a state court ...has decided an important question of federal law...in a way that conflicts with applicable decisions of this Court."

Upon the foregoing arguments, and points and authorities, this petition for writ of certiorari should be granted. For the foregoing reasons the petitioner,

Stanley Furmanski, respectfully requests that a writ of certiorari issue to the California Court of Appeals, Second Judicial District, so that its judgment and opinion may be reviewed and reversed.

Respectfully submitted,

Stan Furmanski M.D.
2303 North 44th St 161
Phoenix,Arizona 85008
Petitioner

APPENDIX

KAREN IBARA

Petitioner for Removal

(filed August 16, 1989)
US District Court and
filed also with clerk
of Calif Superior Court

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFONRIA

KAREN IBARA Petitioner ---------- S FURMANSKI vs G FURMANSKI KAREN IBARA	CASE 89-4893 CBM Civil case D 128 811 Bankrupt LA 89-07391SB PETITION FOR REMOVAL OF ACTION TO UNITED STATES DISTRICT COURT

1) The petitioner, Karen Ibara makes the following Application for Removal of a state civil action to the United States District Court.

2) Petitioner, Karen Ibara is a party and claimant in a civil action in Los Angeles Superior Court, Central

District in civil case D 128 811, consolidated.

5) The Petitioner Ibara, as a party has standing to apply for REMOVAL, pursuant to Bankruptcy Rule of Procedure 9027, which Rules were adopted by the Supreme Court pursuant to Section 2075 Title 28 United States Code. She makes application to remove the civil case D 128 811 [together with the cases consolidated with and now designated as D 128 811]. The petitioner requests referral to Judge Samuel L. Bufford, Judge of the Bankruptcy Court, Central District of California.

Verified by Karen Ibara, petitioner.

August 10, 1989

/s/

Karen Ibara

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CASE NO CV 4893 CFM Date 10/20/89

Title: Stanley Furmanski v Gail Furmanski

DOCKET ENTRY: On the Court's own motion, this action is remanded to the Bankruptcy Court for the Central District of Calif. (CFM).

PRESENT: Hon. Consuelo B. Marshall, Judge

Joseph M. Levario, clerk

ATTORNEYS: N/A

Dated 10/20/89

SECOND APPELLATE DISTRICT

DIVISION FIVE NO B 043231

IN THE SUPREME COURT OF THE STATE OF

CALIFORNIA IN BANK

In Re the Marriage of Stanley and Gail

Hansen Furmanski S039321

STANLEY FURMANSKI, Appellant

V.

GAIL HANSEN FURMANSKI, Respondent

And Companion Case

FILED

JANUARY 27, 1993

"Petitions for review denied".

Mosk

Acting Chief Justice

January 27, 1993

OFFICE OF THE CLERK

COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLANTE DISTRICT

JOSEPH A. LANE, CLERK

DIVISION: 5 date: 12/03/92

RE: Furmanski, Stanley

vs.

Furmanski, Gail

Shelton, Alda

2 Civil B 043231

Los Angeles, No. D 128 811

THE COURT:

Petition for

rehearing denied (Stan Furmanski)

Court of Appeal

APRIL 7, 1989

UNITED STATES BANKRUPTCY COURT FOR

THE CENTRAL DISTRICT OF CALIFORNIA

IN RE

STAN FURMANSKI CASE 89-07391 SB

"VOLUNTARY PETITION UNDER CHAPTER 11"

SUPREME COURT REPORTER

VOLUME 102a

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NORTHERN PIPELINE CONST VS MARATHON PIPE LINE CO.

102 SUPREME COURT REPORTER 2858.

(title page only)

appendix pg. 1g

28 USC 1146(e)

"PROCEDURE FOR REMOVAL"

A defendant or defendants desiring to remove any civil action or criminal prosectuion from a State Court shall file in the distict court of the United States for the district and division within which such action is pending a verfied petition containing a short and plan statement.
(e) Promptly after the filing of such petition and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of the State court, which shall effect the removal and the STATE COURT SHALL PROCEED NO FURTHER UNLESS AND UNTIL THE CASE IS REMANDED."

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF

STATE OF CALIFORNIA

SECOND APPEALLATE DISTRICT

DIVISION FIVE

In re Marriage of	)	
	)	
STANLEY and GAIL HANSEN	)	
	)	
FURMANSKI	)	B 043231
	)	

Filed Nov 10, 1992
Discretionary
Review denied Jan 27, 1993

APPEAL from a judgment of the Superior Court of Los Angeles County James G. Kolts Judge. Affirmed.

Stanley Furmanski, in pro per, for Cross-defendant and appellant.

Karen Ibara, in pro per, and Stanley Patnoi for third party claimants

Spector Buter Hoberman & Buzard Irwin Buter and Gary Brown for cross-complainant and Respondent.

Appellants Stanley Furmanski, Karen Ibara and Ibara Land Trading Co. (Ibara Land) appeal from a further judgment on reserved issues in favor of respondent Gail Hansen filed on August 31, 1989. Attorney Alda Shelton appeals from an order imposing $2500. in sanctions. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Furmanski and Hansen (formerly Gail Hansen-Furmanski). both physicians specializing in radiology, were married on December 21, 1974. In October 1984, Furmanski filed a petition for dissolution. Furmanski and Hansen's status of marriage was terminated on October 7, 1985. In the years that followed, a war involving the distribution of assets was waged. During this time, Furmanski's new wife Karen Ibara, claimed that community property located in Manhattan Beach belonged to her, or her corporation, Ibara Land.

Ibara filed a civil suit on her behalf and on behalf of Ibara Land claiming this property. Hansen cross-complainted, asserting numberous causes of action, including fraud. This civil suit was consolidated with the dissolution action and other civil suits. Questions persisted as to the property rights of Furmanski, Ibara, Ibara Land and Hansen, including the ownership rights to 2206 and 2206 1/2 The Strand, two condominiums located on the same lot. Further, during the pendency of the actions, Furmanski and Ibara filed numberous bankrutpcy petitioners, writ petitions, and one appeal, all in an effort to delay the final adjudication of the issues and to deprive Hansen of her property.

On May 24, 1989, pursuant to Code of civil procedure 128.5, attorney Alda Shelton who represented Ibara Land was sanctioned $ 2,500.

Finally, on August 31, 1989, the court resolved the remaining property issues by entereing a further judgment on reserved issues. In this judgment: (1) Furmanski was ordered to pay Hansen the sum of $230,000 in attorney fees, which sum was in addition to the $ 300,000 previously ordered; (2) certain property was awarded to Furmanski; (3) certain propertty was awarded to Hansen, including the real property located at 2206 and 2206 1/2 The Strand, Manhattan Beach; (4) Furmanski was found to have misappropriated $ 37,000 in community funds; (5) Furmanski was given credit for specified lease payments; and (6) it was found that numerous entities and/or corporations were the alter ego of Furmanski, including Supersoft, Inc. In reaching its conclusions, the court wrote and extensive statement of decision which included a finding that Furmanski and Ibara engbaged in a conspiracy to defraud Hansen out of the property located

at 2206 The Strand.

Appellants Furmanski, Ibara, and Ibara Land contend they were denied a jury trial and the state court lacked jurisdiction to enter the August 31, 1989 order because the matter was removed to federal coiurt. Furmanski additionally contends the court abused its discretion in ordering him to pay $ 230,000 in attonrey's fees and the division of property was not equal. Ibara and Ibara Land further contend the court's finding of fraud is unsupported by the record, and thus, Hansen should not have received the property at 2206 The Strand. Attorney Shelton appeals from the order imposing sanctions. Additionally facts will be discussed where pertinent.

DISCUSSION

JURY TRIAL. The contension of Furmanski, Ibara and Ibara Land that they were denied a jury trial has no merit.

Assuming this case involved matters which

entitled appellants to a jury trial, appellants have waived their right to assert this issue on appeal.

Although written demands for a jury trial were filed in March 1988, appellants have waived their right to assert this issue on appeal because appellants did not object or make a request for jury trial at the time trial was commenced without a jury. On Februarty 21, 1989, Furmanski was sworn and testified. When a witness took the stand, the trial began. When appellants did not assert their demand for ajury trial at this time, their right to assert this issue on appeal was waived.

Appellants argue that no one understood the trialhad commenced when Furmanski took the stand, they were misled into believing Furmanski's limited testimoney was given only to protect the five-year statute of limitations, no waiver wasintended nor understood, and they requested a jury trial

at the appropriate time. These arguments misconstrue the record.

Furmanski took the stand on Feb 21; thereafter the parties appeared numberous times. Even though no testimoney was taken during these short appearances, it was noted that the trial had already begun. Thus, appellants had numberous opportunities to announce their desire for a jury trial.

When, the matter was called for trial on February 21, 1989, the parties agreed to a continuance so Furmanski could make financial arrangements which "may arise out of this litigation; and that this continuance is authorizing contemplation of a settlement being effected at that time. The court was further insured by all parties that there would be no motions filed, no appeals, no writs sought or further discovery between now and that date. It is also the [the court's] undeerstanding that [Hansen] was desirous of preventing any possibility that the five-year statute might run and therefore

wishes to call [Furmanski] simply to start the proceedings underway..." Furmanski was called to the stand, sworn, and testified as to his address. The case was continued.

The parties next appeared on March 6, 1989, during which time the court addressed, among other issues, the representations of Ibara Land. During this discussion, one attorney stated "we're in trial already...we have started trial." Furmanski's counsel also acknowledged the trial had begun when he stated "part of [the settlement meetings] was that no trial would go forward." During the settlement discussions, appellants did not inform the court that they had filed a writ petition o that same day. On March 7, 1989, proceedings apparently were held, but the matter could not proceed because the court of appeal issued a stay upon the filing of a writ petition on the previous day.

On March 22, 1989 the parties appeared; it was noted the matter had been continued, but it could not proceed because a stay had been issued by this court (of Appeals). The parties again appeared on March 27, 1989, at which time Furmanski's attorney requested she be relief as cousel.

Removal

The trial court entered its judgment on August 31, 1989. We are unpersuaded by appellant's contention the court lacked the jurisdiction to enter this judgment because the matter had been removed to federal court.

We outline in chronological order the pertinent events: On October 29, 1984 Furmanski filed the dissolution action, case D 128 811. On March 7, 1986, Ibara and Ibara Land filed their contract complaint, case SWC 83958. These cases, along with cross-actions were consolidated. On April 7,1989, Furmanski

filed a Chapter 11 bankruptcy petition case no LA 89-07391SB.

On March 31, 1989, the bankruptcy court issued the following order: "It is hereby ordered that 1. the automatic stay arising by virtue of 11USCA Sectiuon 362 is hereby terminated nunc pro tunc as ofMarch 21, 1989 to permit Gail Hansen...to proceed totrial in all pending state court action. Said relief is for the sole purpose of allowing to proceed to trial and to liquidate her claim against Furmanski. During the pendency of this bankruptcy proceeding, Hansen is precluded from executing upon any judgment received in the state court withoutfurther order of this court. Any automatic stay is to have no force and effect against Hansen for180 days.

On August 16, 1989, Ibara filed a petition for removal of the action to the United States District Court requesting that civilcase no D128 811 consolidated

with other cases be removed to the federal bankruptcy court. The docket sheet of the California Superior Court reflects the supeiro court received Ibara's notice of removal of case no D 128 811 to the United States District Court. The petition stated the case was removed "effective upon the filing of this notice...."

On August 31, 1989 the superior court issued the judgment on further issues in the state court, from which appellants appeal.

On October 23, 1989 the federal court remanded Ibara's matter to the bankruptcy court.

The March 13 1989 order is quoted.

Appellants cite to, among other autority 28 USX 1446, LagunaVillage, and Sugiomot vs Exporadora, to argue the August31, 1989 state corut judgment is void because the matter was removed to the fedealcourt as soon as the petition for removalwas filed with the federal court.

28 USC section 1446 governs removal to

state courts. It makes removal effective upon the filing of a petition of removal in the federal court, the service of the petition on the courts and the parties. Thus, "when a removalpetition is filed and proper notice is given, the entire case is transferred to federal district court." Mesada vs Honda Motors 861 F 2d 1248.

The issue as to whether removal voided the August31 1989 judgment has been raised and resolved in the bankruptcy court. The bankruptcy court orders of March 31, 1989, March 13, 1990, and May 10, 1990, indicate the bankruptcy court specifically examined the issue as to whether the case

was removed to the federal court which would have deprived the state court of the jurisdiction to proceed with Hansen's claims. The bankruptcy court, which had information before it necessary to make such a determination, specifically gave the state court the power to proceed, found the federal court did not acquire jurisdiction over the case, determined the state court's judgments, including the August 31, 1989 decree were valid and enforceable. The bankruptcy court has already examined the federal laws andconcluded the state court judgments and orders were not void. We must give fullfaith andcredit "to a final order or judgment of a federal court." Such an order or judgment has the same effect in the courts of thisstate as it would in federal court.

We conclude the August 31, 1989 judgment is valid.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondent Gail Hansen Furmanski.

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(end of appendix)

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